

REMARKS:

The Office Action dated September 30, 2010, has been received and carefully noted. The above amendments to claim 1, and the following remarks, are submitted as a full and complete response thereto.

By this Response, claim 1 has been amended to more particularly point out and distinctly claim the subject matter of the present invention. No new matter has been added, and no new issues are raised which require further consideration and/or search. Support for the above amendments is provided in the specification, at least, on paragraph [0081], and as shown in Figures 1 and 2. Accordingly, claims 1, 5, 17, 19, and 37 are currently pending in the application, of which claim 1 is the only independent claim.

Applicant thanks the Examiner for the courtesies extended during the telephone interview conducted on September 20, 2011.

In view of the above amendments and the following remarks, Applicant respectfully requests reconsideration of claims 1, 5, 17 and 19, and timely withdrawal of the pending claim rejections for the reasons discussed below.

REJECTION UNDER 35 U.S.C. § 102:

The Office Action again rejected claims 1, 17, and 19 under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 3,862,733 of Sullivan. Applicant respectfully

submits that claims 1, 17, and 19 recite subject matter that is neither disclosed nor suggested in Sullivan.

Sullivan describes a stand 10 for supporting loads, especially on poles, such as Christmas trees and the like, having a base and a plurality of demountable legs 12. The legs 12 interlock and cooperate with the base to permit the assembled stand 10 to support relatively great weight. To support that Sullivan describes the aperture recited in independent claim 1, the Office Action referred to the slots 47 described in Sullivan. However, Sullivan describes that *the load member 28 is in the nature of a tubular socket as shown in stand 10, such tubular socket may have at least one longitudinal slot 47 (preferably a pair of diametrically opposed such slots 47) formed in the wall thereof to provide yielding, radial expansibility in such tubular socket relative to the axis 23 thereof.* (Emphasis added) See column 4, lines 60-66. Clearly, the longitudinal slot or slots 47 of Sullivan are not located **at a connection** between the load bearable member 28 and the base panel 11. (Emphasis added) Specifically, the slots 47 are not configured to be “located at a connection between the retaining member and the base,” as recited in independent claim 1.

In addition, Sullivan describes that when the load bearable member 28 is in the nature of a tubular socket, the inside walls of such socket may have formed therein at least one longitudinal ridge 48, preferably a pair of diametrically opposed ridges 48, to permit such a hollow socket member to better grasp the base end of a tree base, pole, or the like inserted thereinto for support. See column 5, lines 1-8. Preferably, there are two

pairs of circumferentially spaced such ridges 48 formed on the inside walls of such a hollow socket member.

Sullivan fails to teach or suggest, “wherein the projections run substantially axially with the tree retaining member and include *a sharp or pointed portion* to at least partially penetrate the trunk of a tree inserted into the tree retaining member,” as recited in independent claim 1. The structural configurations of the protrusions recited in independent claim 1 are sharp or pointed so that they are able to penetrate the trunk of the tree. In contrast, the pair of diametrically opposed ridges 48 illustrated in FIGS. 2 and 5 of Sullivan are not described as being “*sharp or pointed* portion arranged in use *to at least partially penetrate the trunk* of a tree inserted into the tree retaining member,” emphasis added, as recited in independent claim 1. The ridges 48 of Sullivan simply permit a hollow socket member to better grasp the base end of a tree base, pole, or the like inserted thereinto for support. See column 5, lines 1-8. As well known in the art, ridges are not sharp or pointed.

Furthermore, claims 17 and 19 depend from, and further limit, claim 1. Accordingly, claims 17 and 19 should be allowable for at least their dependency upon an allowable base claim.

For at least the reasons discussed above, Applicant respectfully requests withdrawal of this rejection, and reconsideration of claims 1, 17, and 19.

REJECTION UNDER 35 U.S.C. § 103:

The Office Action rejected claims 5 and 37 under 35 U.S.C. §103(a) as being allegedly unpatentable over Sullivan. The Office Action acknowledged that Sullivan fails to disclose or suggest that the tree retaining member does not substantially protrude from the fluid reservoir.

The Office Action alleged, however, that it would have been obvious to a person of skill in the art to have modified the tree stand of Sullivan to include the fluid reservoir and that the aperture comprises a slot cut in a curved surface of the tree retaining member, because its is a matter of design choice and it appears that the invention would perform equally well with the tree retaining member protruding from the fluid reservoir such as one taught by Sullivan. Applicant respectfully submits that such contentions are clearly erroneous. In *KSR Int'l Co. vs. Teleflex, Inc.*, the Supreme Court reiterated the Federal Circuit's instructions, *In re Kahn*, 441 F. 3d 977, 988, (Fed. Cir. 2006) that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, slip op. at 14. In this instance, without any support from Sullivan, the Office Action concludes design choice and that the invention would perform equally well with the tree retaining member protruding from the fluid reservoir such as one taught by Sullivan when this reference does not even contemplate a fluid reservoir. Sullivan, as explicitly described in this reference, is directed to a load bearing stand. There is no teaching or suggestion of a fluid reservoir

that, as explained in the Specification of the present application, is a reservoir with fluid; thus, recited as “a fluid reservoir.” Mere conclusory statements unsupported by evidence or articulated reasoning with rational underpinning is not sufficient to support the rejection. Thus, Applicant respectfully request that this rejection be withdrawn.

Furthermore, as previously discussed, Sullivan fails to disclose or suggest every element recited in independent claim 1, and therefore would also fail to disclose or suggest every element recited in claims 5 and 37. In particular, Sullivan fails to disclose or suggest, at least “wherein the tree retaining member comprises an aperture located at a connection between the retaining member and the base and the tree retaining member comprises a substantially cylindrical hollow member,” as recited in claim 1. Furthermore, claims 5 and 37 depend from, and further limits, claim 1. Accordingly, claims 5 and 37 should be allowable for at least its dependency upon an allowable base claim.

In conclusion, Applicant respectfully submits that claims 1, 5, 17, 19 and 37 recite subject matter that is neither disclosed nor suggested in Sullivan. These distinctions are more than sufficient to render the claimed invention unanticipated and non-obvious. For at least the reasons discussed above, it is therefore respectfully requested that all of claims 1, 5, 17, 19 and 37 be allowed, and this application passed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by

telephone, Applicant's undersigned representative at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

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